80-1028

No. .....

Supreme Court, U.S.
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Supreme Court of the United States

October Term, 1980

JOHN J. TONER,
IRVIN WIERZBINSKI,
and
MARTIN KELLEY,
Petitioners,

vs.

JONATHAN HANNA, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

JOHN T. CORRIGAN, *Prosecuting Attorney of Cuyahoga County*
THOMAS P. GILL, *Chief Civil Division Assistant Prosecuting Attorney Counsel of Record*
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QUESTIONS PRESENTED

Whether a District Court's decision exercising its discretion to abstain in an action presenting allegations of violations of state and federal civil rights in a state's facility for the temporary detention of juveniles was properly overturned by the Circuit Court.

Whether application of the equitable doctrine of abstention is proper only in cases fitting precisely within the limits of prior cases where abstention was found appropriate.

PARTIES

Jonathan Hanna, by and through his next friend, Ruth Hanna, and Todd Hansen were Plaintiffs in the District Court and Appellants in the Court of Appeals.

John J. Toner (Administrative Judge of the Cuyahoga County, Ohio, Juvenile Court), Irvin Wierzbinski, and Martin Kelley were Defendants in the District Court, Appellees in the Court of Appeals, and Petitioners herein. Lee P. Phillips was a Defendant in the District Court and an Appellee in the Court of Appeals.

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No. .....

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JOHN J. TONER,
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PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

The Prosecuting Attorney of Cuyahoga County, on behalf of the State of Ohio, the Juvenile Court of Cuyahoga County, Ohio, John J. Toner, Irvin Wierzbinski, and Martin Kelley, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals for the Sixth Circuit is unreported, but is printed in the Appendix, *infra*, p. A1. The Opinion of the Federal District Court is unreported, but is printed in the Appendix, *infra*, p. A9.

JURISDICTION

The decision of the United States Court of Appeals for the Sixth Circuit was filed September 2, 1980. The mandate was issued September 23, 1980, and was filed in the District Court on September 26, 1980.

This Court has jurisdiction to grant this petition under United States Code, Title 28, Sections 1254(1) and 2101(C), which provides for review by writ of certiorari of any case in the courts of appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment of the United States Constitution, which provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment of the United States Constitution, which provides, in pertinent part:

(Section 1)

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28, sec. 1331(a) of the United States Code, which provides:

Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

Title 28, section 1343, parts (3) and (4) of the United States Code, which provide:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

* * *

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Title 42, section 1983 of the United States Code, which provides:

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any

citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Section 2151.34 of the Ohio Revised Code, which provides in pertinent part:

> In case a detention home is established as an agency of the court, or a district detention home is established by the courts of several counties as hereinbefore provided, it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron in a non-punitive neutral atmosphere. The judge, or the directing board of a district detention home, may appoint a superintendent, a matron, and other necessary employees for such home and fix their salaries. During the school year, when possible, a comparable educational program with competent and trained staff shall be provided for those children of school age. A sufficient number of trained recreational personnel shall be included among the staff to assure wholesome and profitable leisure-time activities. Medical and mental health services shall be made available to insure the courts all possible treatment facilities shall be given to those children placed under their care. * * *
>
> * * * * *

STATEMENT

On November 13, 1978, the named Plaintiffs, Jonathan Hanna and Todd Hansen, filed a class action complaint and a motion to certify the action as a class action. A first amended complaint was filed November 14, 1978.

The named Plaintiffs were juveniles who had been confined to the Cuyahoga County (Ohio) Juvenile Detention Home, a facility used for the temporary detention of children pending juvenile court hearings or placement in a permanent institution. The potential class was alleged to be all children, past, present and future, who might be or have been confined in the home.

The original complaint and the first amended complaint named four defendants. Three of these are the Petitioners herein, all of whom are or were involved in the administration of the Cuyahoga County Juvenile Detention Home. The first amended complaint alleged that the Petitioners herein failed to provide plaintiff Hansen with a meaningful education (First Amended Complaint, paragraphs 14-17), failed to provide adequate outdoor recreation (First Amended Complaint, paragraphs 18-19), and have failed to correct problems of excessive punishment inflicted by their employees on the children confined in the home (First Amended Complaint, paragraphs 20-26, 28). Additional claims were made that Petitioners have failed to adequately select, train and supervise employees (First Amended Complaint, paragraph 33), and that Petitioners failed to provide children confined in the home with adequate "treatment" (First Amended Complaint, paragraph 31).

Causes of action were claimed under the Eighth and Fourteenth Amendments to the United States Constitution,

under 42 U.S.C. § 1983, and under state law. Jurisdiction was claimed pursuant to 28 U.S.C. 1343(3) and (4), and 28 U.S.C. § 1331.

The fourth Defendant, Lee Phillips, was an employee at the Home who allegedly beat Plaintiff Hanna. He was dismissed from this employment following investigation of the incident.

On April 6, 1979, Plaintiffs moved for leave to file a second amended complaint. If granted, the proposed second amended complaint would have added two plaintiffs, one defendant (the Cleveland Board of Education), and would have expanded the original claims.

The District Court held a hearing on April 17, 1979, styled a hearing on class certification. Testimony was taken and depositions submitted.

On May 8, 1979, the District Court filed a memorandum finding that the plaintiffs' complaint ought be dismissed on grounds of abstention. A separate, final order dismissing the action was entered May 22, 1979. No orders had been entered with respect to the motion for class certification or the motion for leave to file a second amended complaint.

Appeal was taken to the United States Court of Appeals for the Sixth Circuit. An opinion reversing the District Court's order was filed September 2, 1980, together on that date with a judgment which was issued as a mandate on September 23, 1980 and filed with the District Court on September 26, 1980.

REASON FOR GRANTING THE WRIT

The Court of Appeals' restriction of the District Court's exercise of discretion here presents this Court with the opportunity to deal with the abstention doctrine in the context of conditions of juvenile confinement. The availability of the discretion to abstain in such cases is a matter of extreme importance to the District Courts in view of the current explosion of litigation and the potential interference both with state laws and with areas of important state interests. The extent to which a District Court's discretion should be curtailed in such matters is an important question of federal jurisdiction which has not been, but should be, settled by this Court.

1. This court has never dealt specifically with the abstention doctrine as affirmatively applied to a civil rights suit challenging conditions of confinement of inmates, whether the inmates be adults or, as here, juveniles. In cases such as *Haines v. Kerner*, 404 U.S. 519 (1972), dealing with dismissals of prisoners suits for failure to state a claim upon which relief can be granted, the doctrine has not been discussed. In cases such as *Procunier v. Martinez*, 416 U.S. 396 (1974), the issue has not been resolved because the decisions below were against application of the doctrine. Here, however, the District Court affirmatively exercised its discretion and applied abstention in a conditions of confinement case. The Court of Appeals, in reversing, dealt only with that doctrine. This case therefore presents this Court with a situation where the application of the abstention doctrine is the only issue involved, and the doctrine was applied in a context where there has been no prior guidance from this Court.

2. The abstention doctrine in general remains one of unsettled application and restrictions on it have been the

subject of controversy and confusion which ought be settled.

The abstention doctrine became an important asset of the District Courts with this Court's decision in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The doctrine was continuously expanded by such decisions as *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); *Younger v. Harris*, 401 U.S. 37 (1971); *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959); and *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

The Court of Appeals for the Sixth Circuit, in this case, relied on dictum in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), to constrict the doctrine and reverse the District Court. The *Colorado River* case exhibits exactly the type of confusion which requires re-examination of the restrictions on the doctrine. In that case this Court first described the doctrine as one of limited application, then stated it applied in three *general* categories of cases, and finally affirmed a dismissal on what can be described as abstention applied to a fourth category of cases. That category occurs where concurrent state and federal civil actions are pending between the same parties on approximately the same subject, and the federal question is not one exclusively confined to consideration by federal courts. See also, *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655 (1978).

This restriction of the doctrine by categorization or pigeon-holing of its various aspects thus leads to confusion. Three categories, and possibly a fourth, were outlined in *Colorado River Water Conservation District v. United States, supra.* Abstention, however, is a question of equitable discretion. *Alabama Public Service Commission v. Southern Ry.*, 341 U.S. 341 (1951). It should therefore not be subject to a requirement that each application

of it fit precisely within a previously circumscribed standard.

The present case presents the opportunity to clarify these considerations. The Court of Appeals found the District Court's decision and Defendants' claims were grounded on the doctrine as applied in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), a case involving intrusion into an area where a state had established its own elaborate review system for actions pertaining to issuance of permits to drill oil wells. The Court of Appeals gave a cursory treatment to the other categories of abstention. Despite this statement by the Court of Appeals, however, Defendants had urged that *Pullman*-type abstention and general equitable considerations also supported abstention. A party may urge on appeal a reason for affirmance not relied on by the Court below. *California Bankers Association v. Schultz,* 416 U.S. 21, 71 (1974). The Court of Appeals should have affirmed if the result below was right, even though the trial court relied upon or gave a wrong reason. *See, Securities and Exchange Commission v. Chenery Corp.*, 318 U.S. 80, 88 (1943).

The amended complaint herein presented questions of state law which might have mooted or altered questions of federal constitutional law.[1] This case involves treatment of juveniles, an area where states have traditionally a great interest. It arguably presents difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in this case. This case can be said then, to fit into traditional absten-

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1. The amended complaint included problems of Defendants' duties to maintain conditions described in the complaint and by Ohio Rev. Code § 2151.34 as "nonpunitive". The complaint also requested an intrusion into the Detention Home's educational and recreational programs, also subjects of Ohio Rev. Code § 2151.34. Plaintiffs further claimed Petitioners had a duty to provide a "therapeutic" atmosphere in the home.

tion as generally described in the first two categories treated in *Colorado River, supra,* even though it may not fit precisely into the constrictions of any one case.

This Court can here clarify the restrictions on application of the abstention doctrine, can resolve the confusion caused by attempts to categorize aspects of abstention, and can provide clearer guidelines to the Courts of Appeals in reviewing cases where abstention has been ordered.

3. The decision of the Court of Appeals represents an undue restriction on District Courts' abilities to manage their cases and decide what cases are most appropriate for consideration in the state court systems. This emasculation of District Courts' power to exercise discretion merits review.

The multiplication of litigation in the United States severely hampers the effective administration of justice in the federal courts. The Chief Justice of this Court has already commented on the increased burden of district judges despite the addition of new judicial positions. See, W.E. Burger, *Annual Report on the State of the Judiciary-1980,* 66 A.B.A.J. 295 (1980). As a method of alleviating the burden currently imposed on Federal Courts, he has recommended elimination of diversity jurisdiction. W.E. Burger, *1977 Report,* 63 A.B.A.J. 504 (1977).

Another suggestion, by Judge Friendly of the Second Circuit, would:

> "* * * Require state prisoners complaining under the Civil Rights Act with respect to the conditions of their confinement to exhaust state administrative and judicial remedies, if these are adequate and effective, before bringing suit in the federal courts (footnote omitted)."

H. J. Friendly, *Averting the Flood by Lessening the Flow,* 59 CORNELL L. REV. 634, 643 (1974).

Judge Friendly's suggestion goes far beyond the practice which abstention currently allows, but it reveals that the courts have been concerned with the type of case presented here.

This case presents the Court with the opportunity to allow limited or total application of Judge Friendly's plan and to decide the extent to which District Courts may defer or decline jurisdiction where the matters involved are amenable to state court proceedings.

In sum, the ruling below increases restrictions on and confusion about the District Court's abilities to apply the abstention doctrine. This important area of federal practice and jurisdiction requires clarification by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX

OPINION OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed September 2, 1980)

No. 79-3476

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JONATHAN HANNA, *et al.*,
Plaintiffs-Appellants,

v.

JOHN J. TONER, *et al.*,
Defendants-Appellees.

APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division.

Before: EDWARDS, *Chief Judge,* KEITH and BROWN, *Circuit Judges.*

EDWARDS, *Chief Judge.* The federal courts were created to vindicate the constitution and laws of the United States, *Bivens v. Six Unknown Named Agents,* 403 U.S. 388 (1971); *Bell v. Hood,* 327 U.S. 678, 684 (1946), *Marbury v. Madison,* 1 Cranch 137, 163, 177 (1803). The rule, of course, is that their doors are open to complaints of violation of such laws. Exceptions to that rule are few and narrowly drawn. *Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, 813 (1975); *County of Allegheny v. Frank Mashudda* Co., 360 U.S. 185, 188-89 (1959). The exceptions would swallow the rule if a fed-

eral court were required or allowed to close its doors to a complaint charging, as here, abuse of the fundamental constitutional rights of children in a county detention home.

The complaint in this case was filed under 42 U.S.C. § 1983 of the Civil Rights Act of 1871 against individuals who have administrative responsibility for the operation of the Cuyahoga County Juvenile Detention Home. Jurisdiction is alleged under 28 U.S.C. §§ 1341 and 1343 (1976).

The named plaintiffs are four young people, represented by next of kin, who are alleged to have been subjected to physical abuse, lengthy solitary confinement inflicted without hearing, "inhumane" conditions and deprivation of education in the Detention Home—all in violation of Articles I, IV, VIII and XIV of the federal Constitution. The suit is brought as a class action on behalf of all young persons similarly confined; the plaintiffs sought class certification, injunctive relief and compensatory monetary damages. None of the allegations of this complaint have been heard or adjudicated and, of course, we pass no judgment upon them. After a hearing on the plaintiffs' motion for class certification, the complaint was dismissed without prejudice *sua sponte* by the District Judge in reliance upon a rarely used abstention doctrine which originated in the case of *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

In *Burford,* the Supreme Court found an overriding state concern and superior competence in the courts of Texas to deal with a complex state regulatory scheme for controlling the drilling of oil wells into a general underground oil pool. Since we find the *Burford* doctrine inapplicable to the facts of this case, we reverse and remand for trial on the merits.

Settled federal law holds that allegations of violations of the U.S. Constitution in state and local prisons and jails are subject to the jurisdiction of the federal courts. *Zwickler v. Koota,* 389 U.S. 241 (1967); *McNeese v. Board of Education,* 373 U.S. 668 (1963); *Procunier v. Martinez,* 416 U.S. 678 (1978); *Wolff v. McDonald,* 418 U.S. 539 (1974); *Hutto v. Finney,* 437 U.S. 678 (1978); *Bell v. Wolfish,* 441 U.S. 520 (1979). In *Martinez, supra,* the U.S. Supreme Court said:

> "[A] policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution. When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights."

416 U.S. at 405-406.

This court has squarely held that absention from hearing claims of institutional violation of rights guaranteed by the U.S. Constitution is inappropriate and federal courts must hear federal constitutional claims. In *Jones v. Metzger,* 456 F.2d 854, 855 (1972), this court said:

> "With respect to the first argument, we recognize that courts, especially federal courts, should be reluctant to become involved in the internal administration of state prisons. However, we are impressed that the district court very carefully considered the delicate balance of federal-state relations, as well as the relationship between the judicial and executive branches of our system of government, before deciding to intervene. The court stated that
>
> > [i]t is well-settled that the administration of state detention facilities is a state function. Federal

> courts have a natural reluctance to interfere with such administration and will intercede only where paramount federal constitutional or statutory rights supervene. [Citations omitted.] Prisoners do not lose all of their constitutional rights when they enter a penal institution. Rather they retain all of their constitutional rights except for those which must be impinged upon for security or rehabilitative purposes. [Citations omitted.]"

Many federal cases have recognized that federal courts have exercised and should exercise jurisdiction over complaints alleging federal constitutional abuse in state or local institutions housing juveniles charged with or guilty of criminal violations. *McRedmond v. Wilson,* 533 F.2d 757 (2nd Cir. 1976); *Nelson v. Heyne,* 491 F.2d 352 (7th Cir. 1974), *cert. denied,* 417 U.S. 976 (1974). *Harris v. Bell,* 402 F.Supp. 469 (W.D. Mo. 1975). *Inmates of Boy's Training School v. Affleck,* 346 F.Supp. 1157 (E.R.I. 1972).

The highest authority on federal law has, however, written the text on the distinctions between and the limited circumstances which make abstention proper under (a) the *Pullman* doctrine, *Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496 (1941), (b) the *Burford* doctrine, *Burford v. Sun Oil Co.,* 319 U.S. 315 (1943) and (c) the *Younger* doctrine, *Younger v. Harris,* 401 U.S. 37 (1971).

In *Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800, 813 (1975), the U.S. Supreme Court discussed our instant problem thoroughly and in authoritative language:

> "Abstention from the exercise of federal jurisdiction is the exception, not the rule. 'The doctrine of abstention, under which a District Court may decline

to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the State court would clearly serve an important countervailing interest.' *County of Allegheny v. Frank Mashuda Co.*, 360 U. S. 185, 188-189 (1959). '[I]t was never a doctrine of equity that a federal court should exercise its judicial discretion to dismiss a suit merely because a State court could entertain it.' *Alabama Pub. Serv. Comm'n v. Southern R. Co.*, 341 U. S. 341, 361 (1951) (Frankfurter, J., concurring in result). Our decisions have confined the circumstances appropriate for abstention to three general categories.

"(a) Abstention is appropriate 'in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law.' *County of Allegheny v. Frank Mashuda Co., supra,* at 189. *See, e. g., Lake Carriers Assn. v. MacMullan,* 406 U. S. 498 (1972); *United Gas Pipeline Co. v. Ideal Cement Co.*, 369 U. S. 134 (1962); *Railroad Comm'n of Texas v. Pullman Co.*, 312 U. S. 496 (1941).

"(b) Abstention is also appropriate where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar. *Louisiana Power & Light Co. v. City of Thibodaux,* 360 U. S. 25 (1959), for example, involved such a question. In particular, the concern there was with the scope of the eminent domain power of municipalities under state law. See also *Kaiser*

Steel Corp. v. W. S. Ranch Co., 391 U. S. 593 (1968); *Hawks v. Hamill*, 288 U. S. 52 (1933). In some cases, however, the state question itself need not be determinative of state policy. It is enough that exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern. In *Burford v. Sun Oil Co.*, 319 U. S. 315 (1943), for example, the Court held that a suit seeking review of the reasonableness under Texas state law of a state commission's permit to drill oil wells should have been dismissed by the District Court. The reasonableness of the permit in that case was not of transcendent importance, but review of reasonableness by the federal courts in that and future cases, where the State had established its own elaborate review system for dealing with the geological complexities of oil and gas fields, would have had an impermissibly disruptive effect on state policy for the management of those fields. See also *Alabama Pub. Serv. Comm'n v. Southern R. Co., supra.*

* * * * *

"(c) Finally, abstention is appropriate where, absent bad faith, harassment, or a patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings, *Younger v. Harris*, 401 U. S. 37 (1971); *Douglas v. City of Jeannette*, 319 U. S. 157 (1943); state nuisance proceedings antecedent to a criminal prosecution, which are directed at obtaining the closure of places exhibiting obscene films, *Huffman v. Pursue, Ltd.*, 420 U. S. 592 (1975); or collection of state taxes, *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293 (1943)."

(footnote omitted).

We find no basis in our present case for abstention. Abstention is clearly not justified by the *Pullman* doctrine. Neither the defendants nor the District Judge has relied upon it and no one has pointed to any interpretation by the state's highest court which might avoid a federal constitutional adjudication. The same conclusions may be reached in relation to the *Younger v. Harris* doctrine. The instant case represents no interference or intervention in state judicial processes — criminal or otherwise.

Defendants and the District Judge specifically relied upon the *Burford* doctrine. We do not, however, deal here with any complex state scheme for allocation of property rights as to which the federal courts might lack expertise. Indeed, plaintiffs' claims of federal constitutional violation represent the exact sort of disputes over citizens rights with which the federal courts were created to deal. The Supreme Court has recognized clearly that abstention merely to avoid conflict with a state policy is not appropriate. In *Zablocki v. Redhail,* 434 U.S. 374, 380 n.5 (1977), the Supreme Court said: "there is of course no doctrine requiring abstention merely because resolution of a federal question may result in the overturning of a state policy."

The judgment of the District Court is reversed and the case is remanded for further proceedings consistent with this opinion.

JUDGMENT ENTRY OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Filed September 2, 1980; Filed in the District Court September 26, 1980)

No. 79-3476

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JONATHAN HANNA, *et al.*,
Plaintiffs-Appellants,

v.

JOHN J. TONER, *et al.*,
Defendants-Appellees.

Before: EDWARDS, *Chief Judge,* KEITH and BROWN, *Circuit Judges.*

JUDGMENT

APPEAL from the United States District Court for the Northern District of Ohio

THIS CAUSE came on to be heard on the record from the United States District Court for the Northern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the cause remanded for further proceedings.

No costs taxed.

Entered by Order of the Court
/s/ JOHN P. HEHMAN
Clerk

[Issued as Mandate September 23, 1980.]

MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT

(Filed May 8, 1979)

Civil Action No. C78-1506

THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JONATHAN HANNA, *et al.*,
Plaintiffs

v.

JOHN J. TONER, *et al.*,
Defendants

MEMORANDUM AND ORDER

KRUPANSKY, *J.*

This cause was initiated as a class action to challenge various conditions of confinement at the Cuyahoga County Juvenile Detention Home (Detention Home). The proposed class consists of all minors who have been, are, or will be confined in the Detention Home. Jurisdiction is asserted on the bases of 28 U.S.C. §§1343(3) and (4), which confer upon the district courts original jurisdiction over suits authorized by 42 U.S.C. §1983.

Plaintiffs allege in their First Amended Complaint deprivations of rights guaranteed under the Eighth and Fourteenth Amendments. Specifically, plaintiffs assert that the Detention Home staff adheres to a practice of administering arbitrary, inhumane, and excessive punish-

ment, and that the Detention Home fails to provide adequate or meaningful educational and recreational programs to minors therein confined.[1] Plaintiffs have also recently sought leave of the Court to file a Second Amended Complaint, whereby the scope of the instant action would be expanded appreciably. Therein, plaintiffs posit further deprivations under the First, Fourth, Fifth, Eighth and Fourteenth Amendments, alleging: (1) censorship of mail; (2) solitary confinement without adequate procedural safeguards; (3) failure to utilize the least restrictive environment in confining certain class members; and (4) maintenance of generally deficient institutional conditions, including, *inter alia*, overcrowding, inadequate nutrition, restrictions on visitation, lack of counseling, and inadequate psychiatric and medical care.

Named as defendants in plaintiffs' First Amended Complaint are: John J. Toner, Administrative Judge of the Cuyahoga County Juvenile Court; Irvin Wierzbinski, Administrator of the Juvenile Court; Martin Kelley, Superintendent of the Detention Home; and Lee P. Phillips, an employee of the Detention Home. All are sued both individually and in their respective official capacities. Plaintiffs in addition seek in the Second Amended Complaint to join as defendant the Cleveland Board of Education.

Plaintiffs pray for both comprehensive injunctive relief and compensatory damages for individually named

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1. In addition to these federal claims, plaintiffs ask the Court to exercise pendent jurisdiction over two claims premised on state law. Plaintiffs allege first that an employee of the Detention Home tortiously assaulted plaintiff Jonathan Hanna, and secondly, that certain supervisory defendants, identified below, have negligently exercised their statutory responsibilities to properly train, control and supervise Detention Home employees.

plaintiffs. With regard to the former, plaintiffs ask this Court to:

> 3. Enter a preliminary and permanent injunction requiring defendants Toner, Wierzbinski and Kelley to:
>
> (a) Exercise their duties to select, hire, fire, train, supervise and control Detention Home employees and to set Detention Home policy so as to eliminate reading and censorship of mail; invasions of privacy; overcrowding; the use of excessive force; the infliction of arbitrary, inhumane, physical brutality and bizarre punishments; and the abusive imposition of solitary confinement in the Detention Home.
>
> (b) Provide adequate education, treatment, nutrition, sanitation, recreation, and other conditions for children confined in the Detention Home.
>
> (c) Confine all children only in the least restrictive setting appropriate to the child's needs.
>
> 4. Order the defendant Cleveland Board of Education to provide adequate education for children confined in the Detention Home.

(Second Amended Complaint at 14-15).

In light of plaintiffs' prayer for extensive injunctive relief, and their resort to a federal forum, it is apparent that there are "delicate issues of federal-state relationships underlying this case." *Mayor of City of Philadelphia v. Educational Equality League,* 415 U.S. 605, 616, 94 S.Ct. 1323, 1331 (1974). "Where, as here, the exercise of authority by state officials is attacked, federal courts must be constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power

and State administration of its own law.'" *Rizzo v. Goode*, 423 U.S. 362, 379, 96 S.Ct. 598, 607 (1976), quoting *Stefanelli v. Minard*, 342 U.S. 117, 120, 72 S.Ct. 118, 120 (1951).

The Court observes further that state courts enjoy concurrent jurisdiction with federal courts over civil rights actions brought pursuant to 42 U.S.C. §1983. *Long v. District of Columbia*, 469 F.2d 927 (D.C. Cir. 1972); *Spence v. Latting*, 512 F.2d 93 (10th Cir.) *cert. denied* 424 U.S. 896, 96 S.Ct. 198 (1975). In view of the availability of a state forum wherein plaintiffs may be afforded complete procedural due process, and in deference to the obligation of the federal courts to avoid "needless conflict in the federal-state relationship" *Forest Hills Utility Company v. City of Heath*, 539 F.2d 592, 595 (6th Cir. 1976) quoting *Gay v. Board of Registration Commissioners*, 466 F.2d 879 (6th Cir. 1972), this Court determines that plaintiffs' claims are properly the subject of judicial abstention.

The propriety of considering abstention *sue sponte* is well established. *Bellotti v. Baird*, 428 U.S. 132, 143 n. 10, 96 S.Ct. 2857, 2864 n. 10 (1976). *See Muskegon Theatres, Inc. v. City of Muskegon*, 507 F.2d 199, 201 (6th Cir. 1974); *AFA Distributing Company, Inc. v. Pearl Brewing Company*, 470 F.2d 1210, 1213 (4th Cir. 1973). This is derived from the strong "public policy underlying the application of the abstention doctrine." *Id.* at 1213.

The primary reference on abstention is the decision of the Supreme Court in *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 496, 61 S.Ct. 643 (1941). There the Court, reasoning in support of abstention by the federal courts, stated:

> Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law . . .;

> or the administration of a specialized scheme for liquidating embarrassed business enterprises . . .; or the final authority of a state court to interpret doubtful regulatory laws of the state. . . . These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, "exercising a wise discretion", restrain their authority because of "scrupulous regard for the rightful independence of the state governments" and for the smooth working of the federal judiciary. *Id.* at 500-501 [citations omitted].

The Supreme Court's most recent comprehensive pronouncement respecting the abstention doctrine was provided in *Colorado River Water Conservation District v. United States,* 424 U.S. 800, 96 S.Ct. 1236 (1976). There the Court, while noting that "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule", acknowledged that abstention is justified " 'in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest' ". *Id.* at 814, quoting *County of Allegheny v. Frank Mashuda Company,* 360 U.S. 185, 188-189, 79 S.Ct. 1060, 1063 (1959). In describing one of the three general categories of cases where abstention has been sanctioned, the Court explained:

> Abstention is also appropriate where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar. *Louisiana Power & Light Co. v. City of Thibodaux,* 360 U.S. 25, 79 S.Ct. 1070, 3 L.Ed.2d 1058 (1959), for example, involved such a question. In particular, the concern there was with the scope of the eminent domain power of municipalities under state law. . . . In some cases, however, the state question itself need

not be determinative of state policy. It is enough that exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern. In *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943), for example, the Court held that a suit seeking review of the reasonableness under Texas state law of a state commission's permit to drill oil wells should have been dismissed by the District Court. The reasonableness of the permit in that case was not of transcendent importance, but review of reasonableness by the federal courts in that and future cases, where the State had established its own elaborate review system for dealing with the geological complexities of oil and gas fields, would have had an impermissibly disruptive effect on state policy for the management of those fields. *Colorado River Water Conservation District v. United States, supra* at 815-816 [Citations omitted].

Federal abstention of the nature described above has been characterized by many courts as *Burford*-type abstention, taking its name from the leading case of *Burford v. Sun Oil Company, supra.* It is clear that the *Burford* variety of abstention counsels federal abdication in order to avoid needless conflict with the administration by a state of its own internal affairs. *See Kelly Services, Inc. v. Johnson,* 542 F.2d 32 (7th Cir. 1976); *BT Investment Managers, Inc. v. Lewis,* 559 F.2d 950, 954 (5th Cir. 1977); cf. *Forest Hills Utility Company v. City of Heath, supra.* Accordingly, "under *Burford*-type abstention, the federal courts defer primarily because of the nature of the state regulatory interest in a particular subject matter and the potential for disruption engendered by federal intervention" *Construction Aggregates Corp. v. Rivera de Vicenty,*

573 F.2d 86, 90 (1st Cir. 1978). *See also Wynn v. Carey*, 582 F.2d 1375, 1382-1383 (7th Cir. 1978). As the Fifth Circuit stated in *BT Investment Managers, Inc. v. Lewis*, *supra* at 955:

> [A] court invoking *Burford*-type abstention essentially defers to a state's overriding interest in the matters *sub judice* and, concomitantly, to the superior competence of the state's courts to adjudicate such matters. Thus, usually at issue in *Burford*-type cases are state regulatory matters such as regulation of natural resources, education, or eminent domain, where a paramount state interest is apparent, where the history of state judicial experience in the area indicates special reliability, or, even absent an established regulatory scheme, where the intrusion of federal adjudication might handicap state government. Unlike *Pullman*-type abstention, *Burford*-type abstention requires neither the presence of a state issue nor unclarity in pertinent state law. Rather, a court abstaining under *Burford* relegates a federal issue to state court adjudication because the federal issue touches some overriding state interest such as those just described. (footnotes omitted)

In light of the relevant case law, and upon review of the record in the instant case, this Court is constrained to conclude that federal abstention is necessary herein to avoid needless interference with the administation of the State of Ohio's juvenile justice system. It is this Court's firm conviction that federal intervention in this and similar cases will prove disruptive of this State's efforts to maintain "a coherent policy with respect to a matter of substantial public concern." *Colorado River Water Conservation District v. United States*, *supra* at 815.

In evaluating the propriety of abstention here, it can hardly be disputed that the care, education, and protection of juveniles is both a traditional local concern and a matter of substantial public importance. Moreover, it is apparent from an examination of pertinent Ohio statutory provisions, and court interpretations thereof, that the State of Ohio strictly adheres to a policy of vesting with local juvenile judges, such as defendant Toner in the instant proceeding, broad powers over the maintenance and administration of the state juvenile detention facilities. A review of the relevant state law is instructive.

By virtue of §2151.34, O.R.C.,[2] the very power to establish county juvenile detention homes lies within the exclusive discretion of the local juvenile court judge. *See* 33 O. Jur. 2d Juvenile Courts §27. Upon his recommendation, the county must provide a suitable facility, and mandamus will lie to compel compliance. *State ex rel. Ray v. South,* 176 Ohio St. 241, 198 N.E. 2d 919 (1964); *State ex rel. Johns v. Board of County Commrs. of Richland County,* 29 Ohio St. 2d 6, 278 N.E. 2d 19 (1972).

Once a detention home is established, it is considered an agency of the juvenile court, and the juvenile judge is authorized by statute to "appoint a superintendent, a matron, and other necessary employees for such home and fix their salaries." §2151.34, O.R.C.[3] Moreover, under

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2. §2151.34, O.R.C., provides in material part: "Upon the advice and recommendation of the judge, the board of county commissioners shall provide, by purchase, lease, construction, or otherwise, a place to be known as a detention home . . . where delinquent, unruly, dependent, neglected, abused children or juvenile traffic offenders may be detained until final disposition."

3. §2151.10, O.R.C., provides in material part:

"The board of county commissioners shall appropriate such sum of money each year as will meet all the administrative expense of the juvenile court, . . . and such sum

(Continued on following page)

§2151.10, O.R.C., as construed by the Ohio Supreme Court, wide latitude is conferred upon the juvenile judge both in determining the budgetary requirements of the juvenile court and the detention home, and in enforcing those determinations. Thus, it has been consistently held that the determination of the necessary expenses of the local juvenile justice system is committed to the sound discretion of the juvenile judge, with the board of county commissioners having no authority to substitute its judgment for that of the juvenile judge. *State ex rel. Moorehead v. Reed,* 177 Ohio St. 4, 201 N.E. 2d 594 (1964); *State ex rel. Foster v. Board of County Commrs. of Lucas County,* 16 Ohio St. 2d 89, 242 N.E. 2d 884 (1968); *State ex rel. Milligan v. Freeman,* 31 Ohio St. 2d 13, 285 N.E. 2d 352 (1972). Further, mandamus is available to enforce the duty of the board of county commissioners to appropriate the amount requested by the juvenile judge. *Id.*

In addition to the mandamus remedy, the Ohio Supreme Court has held that, upon the failure or refusal of the responsible governmental body to provide necessary appropriations, the juvenile court affected thereby possesses "the inherent power to order such appropriation and to enforce its order by contempt proceedings." *State ex rel. Edwards v. Murray,* 48 Ohio St. 2d 303, 358 N.E. 577, 579 (1976). The decision in *State ex rel. Edwards* was most recently reaffirmed in *State ex rel. Board of County Commrs. of Cuyahoga County v. Juvenile Division*

Footnote continued—

each year as will provide for the maintenance and operation of the detention home, the care, maintenance, education, and support of neglected, abused, dependent, and delinquent children, . . . and for necessary orthopedic, surgical, and medical treatment, and special care as may be ordered by the court for any neglected, abused, dependent, or delinquent children. All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge."

of the Court of Common Pleas of Cuyahoga County, 54 Ohio St. 2d 113, 374 N.E. 2d 1369 (1978), wherein the Supreme Court of Ohio upheld the jurisdiction of the Court of Common Pleas to proceed in a contempt action brought to compel the county commissioners to appropriate funds requested for the operation of the very juvenile justice system involved in the instant litigation.

It is clear from the foregoing that, under Ohio statutory and decisional law, scrupulous regard for the independence of local juvenile judges in the performance of their responsibilities respecting the maintenance and administration of juvenile detention facilities is mandated. This mandate may well reflect a legislative judgment that the primary responsibility for the care, protection, and treatment of minors is best entrusted to local juvenile court judges, who are vested with broad discretion to better implement the specialized expertise they can rightfully be expected to acquire.

It is equally clear, moreover, that federal intervention in the case at bar and in similar cases would seriously threaten the independence of local juvenile judges, and jeopardize the application of their expertise. Accordingly, and in view of the principles articulated above, this Court finds that abstention is herein required to "avoid any possible irritant in the federal-state relationship." *Reetz v. Bozanich*, 397 U.S. 82, 88, 90 S.Ct. 788, 790 (1970). While the Court recognizes that plaintiffs raise substantial federal claims, the Court observes, as it must, that ours is a

> "system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do

so in ways that will not unduly interfere with the legitimate activities of the States."

Younger v. Harris, 401 U.S. 37, 44, 91 S.Ct. 746, 750, quoted in *Ohio Bureau of Employment Services v. Hodary,* 431 U.S. 471, 97 S.Ct. 1898, 1904 (1977). In view of the availability of a state court system where plaintiffs' rights may be fully vindicated, with complete procedural due process afforded, this Court declines to exercise its jurisdiction in such a manner as to occasion "needless conflict in the federal-state relationship" *Forest Hills Utility Company v. City of Heath, supra.*

Abstention being warranted out of "proper regard for the rightful independence of state governments in carrying out their domestic policy", *Burford v. Sun Oil Company, supra* at 318, quoting *Commonwealth of Pennsylvania v. Williams,* 294 U.S. 176, 185, 55 S.Ct. 380, 385, the "surrender of federal jurisdiction, not its mere postponement" is appropriate. *Construction Aggregates Corp. v. Rivera de Vicenty, supra* at 89. *See Baltimore Banks For Cooperatives v. Farm Cheese Cooperative,* 583 F.2d 105, 108 (3d Cir. 1978); *BT Investment Managers, Inc. v. Lewis, supra* at 955. Accordingly, plaintiffs' complaint is hereby dismissed.

IT IS SO ORDERED.

/s/ ROBERT B. KRUPANSKY
United States District Judge

ORDER OF THE UNITED STATES DISTRICT COURT

(Filed May 22, 1979)

No. C78-1506

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JONATHAN HANNA, *et al.*,
Plaintiffs,

vs.

JOHN J. TONER, *et al.*,
Defendants.

ORDER

KRUPANSKY, *J.*:

In accordance with the Memorandum and Order filed herein on May 8, 1979,

IT IS ORDERED that the complaint herein is dismissed without prejudice without costs.

/s/ ROBERT B. KRUPANSKY
United States District Judge

FIRST AMENDED COMPLAINT FILED IN THE DISTRICT COURT

Case No. C78-1506

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JONATHAN HANNA, by and through his next friend RUTH HANNA, individually and on behalf of all others similarly situated,

and

TODD HANSEN, individually and on behalf of all others similarly situated,
Plaintiffs,

vs.

JOHN J. TONER, individually and in his official capacity as Administrative Judge of the Cuyahoga County Juvenile Court,

and

IRVIN WIERZBINSKI, individually and in his official capacity as Administrator of the Cuyahoga County Juvenile Court,

and

MARTIN KELLEY, individually and in his official capacity as Superintendent of the Cuyahoga County Juvenile Detention Home,

and

LEE P. PHILLIPS, individually and in his official capacity as an employee of the Cuyahoga County Juvenile Detention Home,
Defendants.

JUDGE KRUPANSKY

FIRST AMENDED COMPLAINT FOR MONEY DAMAGES AND INJUNCTIVE RELIEF

NATURE OF CASE

1. This class action challenges the inhumane conditions, physical violence, and lack of adequate education and recreation in the Cuyahoga County Juvenile Detention Home. Plaintiff Jonathan Hanna, a 16-year old boy, was brutally beaten in the Juvenile Detention Home on May 29, 1978, by a Detention Home staff member. Plaintiff Todd Hansen, who is 18 years old, has been confined in the Detention Home for over 100 days since April, 1978. Like the class of children confined at the Detention Home which plaintiff seeks to represent, plaintiff Hansen has not received any meaingful education or recreation. The class of children has also been subjected to or threatened with acts of violence similar to that suffered by plaintiff Hanna. Plaintiffs seek injunctive relief on behalf of the class and monetary damages for the named plaintiffs.

JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§1343 (3) and (4), which confer original jurisdiction upon the United States District Courts in all suits authorized by 42 U.S.C. §1983 for deprivation under color of state law of civil rights. This Court also has jurisdiction over this action under 28 U.S.C. §1331. The amount in controversy exclusive of interest and costs exceeds $10,000, and the suit arises under the Constitution and laws of the United States. Jurisdiction over plaintiff Hanna's state law claims is allowable under the doctrine of pendent jurisdiction.

PARTIES

3. Plaintiff Jonathan Hanna is a 16 year old citizen of the United States and the State of Ohio. He is a resident of the City of Cleveland but is currently placed in the Buckeye Youth Center, an Ohio Youth Commission facility in Columbus, Ohio. He brings this suit through his mother and next friend, Ruth Hanna. He was confined in the Cuyahoga County Juvenile Detention Home (hereinafter "Detention Home") from May 20, 1978 to June 7, 1978.

4. Plaintiff Todd Hansen is a citizen of the United States and the State of Ohio who is currently confined in the Detention Home. He became 18 on September 29, 1978. He has been confined in the Detention Home since September 26, 1978. Over the past six months he has been confined in the Detention Home for more than 100 days.

5. Defendant John J. Toner is, and was at all times relevant hereto, the Administrative Judge of the Juvenile Court Division of the Cuyahoga County Court of Common Pleas. He is sued individually and in his administrative capacity as the person in charge of the Detention Home pursuant to §2151.34 O.R.C.

6. Defendant Irvin Wierzbinski is, and was at all times relevant hereto, the Court Administrator of the Juvenile Court. As such, he shares responsibility with defendant Toner for the administration and supervision of the Detention Home.

7. Defendant Martin Kelley is and was at all times relevant hereto the Superintendent of the Detention Home.

8. Defendant Lee P. Phillips was at all times relevant hereto employed by the other defendants to supervise children confined in the Detention Home.

9. At all times relevant hereto, all of the defendants acted under color of state law.

CLASS ACTION ALLEGATIONS

10. The named plaintiffs bring their first and second claims individually and on behalf of all children who have been or will be confined in the Cuyahoga County Juvenile Detention Home. The plaintiff class consists of thousands of persons and is so numerous that joinder of all members is impracticable. Questions of law and fact, such as the nature and constitutionality of defendants' policies and practices in the treatment of children confined in the Detention Home, are common to all members of the class. The claims of the named plaintiffs are typical of those of the class. There are no known conflicts between the named plaintiffs and the proposed class, and the named plaintiffs will adequately represent the interests of the plaintiff class.

11. This suit seeks to require defendants to adhere to a uniform standard in the treatment of children confined in the Detention Home. The prosecution of separate actions by individual members of the class would create a risk of varying adjudications with respect to individual members of the class which would establish inconsistent standards of conduct by the defendants.

12. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

FACTUAL ALLEGATIONS

13. The Detention Home is a facility maintained by defendants under authority of §2151.34 O.R.C. for the temporary confinement of children. Most children in the De-

tention Home are awaiting trial. Others have been found delinquent, unruly, dependent, neglected, or abused, and are being held while a placement is sought.

14. *Lack of Education.* The Detention Home fails to provide any adequate or meaningful educational program for young people confined there, even though the confinement may extend for months. Children are allowed to attend three hours a day of "class" in Detention Home during the school year. Children are assigned to these classes by size and age rather than by school level. The "instruction" is entirely non-academic and has no relation to the child's normal school program. It consists of motion pictures about football and other subjects; elementary, routine word puzzles; and an occasional lecture about finding jobs. Children in the Detention Home are not allowed to attend regular classes in the public schools.

15. Plaintiff Todd Hansen is 18 and would have entered twelfth grade in a public high school this fall had he not been confined in the Detention Home. He has always achieved passing grades in school. During his term in the Detention Home, he has received no education with any relation to any twelfth grade courses. He is now hopelessly behind in twelfth grade studies. Even if he were released from the Detention Home immediately and allowed to attend a public school, it would be almost impossible by now for him to complete twelfth grade on schedule. A high school diploma is crucial for him if he is to pursue a career.

16. Defendants' failure to provide plaintiff Hansen with meaningful education significantly impairs his ability to obtain a high school diploma and to pursue a meaningful career. This danger is grave, immediate, increasing, and irreparable.

17. Other children who are or have been confined in the Detention Home are similarly denied meaningful education and have suffered or are threatened with similar irreparable injury.

18. *Lack of Recreation.* Children in the Detention Home are denied reasonable opportunity for recreation, specifically including outdoor exercise. Neither plaintiff Hansen nor the other children in his unit have been outside once for recreation since plaintiff Hansen's current confinement began on September 16, 1978.

19. The denial of outdoor recreation is harmful both psychologically and physically to children confined in the Detention Home. Children who are or have been confined in the Detention Home have suffered or are threatened with continuing irreparable harm because of the defendants' failure to allow them outdoor exercise.

20. *Physical Violence and Inhumane Punishment.* The Detention Home staff follows, and has followed at all times relevant hereto, a pattern or practice of inflicting inhumane, arbitrary, excessive physical violence and bizarre and barbaric punishment upon children confined there. Children, including plaintiffs Todd Hansen and Jonathan Hanna, have been repeatedly subjected to such practices while confined in the Detention Home.

21. On May 29, 1978, while showing a friend that he had been issued and was wearing two pairs of pants because both had holes in them, plaintiff Jonathan Hanna was accused by defendant Lee Phillips and another guard of exposing himself. Plaintiff Jonathan Hanna denied the accusations but was not given an opportunity to be heard or contest the charges. Nor had he ever been informed of the punishment that would follow from this or other defenses [sic].

22. After making these accusations, defendant Phillips and another Detention Home employee took plaintiff Hanna to a solitary "lockup" room maintained in the Detention Home by defendants. Defendant Phillips then brutally kicked, hit, and beat Jonathan Hanna, without cause. Defendant Phillips slashed plaintiff Hanna's scalp by beating him with the sharp heel of a platform shoe.

23. Plaintiff Hanna was left bleeding and in severe pain in the solitary "lockup" room as a result of this beating, until other Detention Home staff members came to his assistance. He was taken to St. Vincent Charity Hospital where he received emergency treatment, including stitches.

24. As a direct and proximate result of the physical assault upon him on May 29, 1978, plaintiff Hanna suffered and continues to suffer extreme pain, physical harm, shock, mental anguish, and emotional distress. In compliance with §2307.42 O.R.C., he states that he has received no benefits as a result of said beating and the ensuing treatment.

25. In approximately the third week of October, 1978, plaintiff Todd Hansen's unit was "floored" by the Dentention Home staff as punishment for the misbehavior of one child. All of the furniture except the beds was removed from the unit and the children were confined to the unit for three days. During the days they had to stand, squat, or sit on the floor. They were allowed no writing material, games, or recreation. Their food was brought into the unit on plates, which were placed on the floor for them to eat from.

26. The Detention Home employees follow a practice of "flooring" units from time to time as punishment. This punishment is cruel, arbitrary, inhumane, and degrading. All children in the Detention Home are subject to a con-

tinuing threat that this or other bizarre punishments will be imposed upon them for their own misbehavior or that of another child.

27. *Defendants' Responsibilities.* Defendants Toner, Wierzbinski, and Kelley are responsible for selecting, hiring, firing, instructing, training, supervising and controlling all Detention Home employees and setting all Detention Home policies. They also have a duty to maintain a therapeutic and nonpunitive atmosphere in the Detention Home. They have knowingly failed to exercise their responsibilities in a way to avoid and control the practices described in paragraphs 13 through 26 of this complaint.

28. Defendants Toner, Wierzbinski and Kelley have knowledge of the denial of education, the denial of recreation, and the infliction of base, excessive physical force and degrading, inhumane punishment in the Detention Home. They have not taken steps to correct these practices but have acquiesced in or condoned them.

29. The injuries and threatened future injuries to plaintiffs Jonathan Hanna and Todd Hansen, and to the other children in the Detention Home, are proximately caused by the actions and nonfeasance of defendants Toner, Wierzbinski, and Kelley. Defendants Toner, Wierzbinski and Kelley have acted deliberately and with gross and reckless negligence, and have displayed deliberate indifference to the needs of these young people.

FIRST CLAIM

30. The infliction of arbitrary, inhumane physical brutality and punishment upon plaintiffs and other class members constitutes cruel and unusual punishment and deprives them of their rights under the Eighth and Fourteenth Amendments to the United States Constitution, causing them irreparable injury.

SECOND CLAIM

31. The denial of adequate education, treatment, and recreation to plaintiffs and other class members deprives them of their rights under the Eighth and Fourteenth Amendments to the United States Constitution, causing them irreparable injury.

THIRD CLAIM

32. Defendant Phillips tortiously assaulted plaintiff Jonathan Hanna, proximately causing him injury.

FOURTH CLAIM

33. Defendants Toner, Wierzbinski, and Kelley, by failing to establish and enforce rules of conduct for the Detention Home, by acquiescing in and condoning the pattern and practices of Detention Home employees and by failing to exercise in a proper manner their power to select, hire, fire, train, supervise and control Detention Home employees, have negligently breached a duty owed to plaintiff Jonathan Hanna, proximately causing him injury.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

1. Accept jurisdiction of this action;

2. Certify this action as a class action;

3. Enter a preliminary and permanent injunction requiring defendants Toner, Wierzbinski and Kelley to:

a. Exercise their duties to select, hire, fire, train, supervise and control Detention Home employees and to set Detention Home policy so as to eliminate the use of excessive force and the infliction of arbitrary, inhumane,

physical brutality and punishment upon children confined in the Detention Home.

b. Provide adequate education and recreation for children confined in the Detention Home.

4. Award plaintiff Jonathan Hanna $50,000 in compensatory damages and $100,000 in punitive damages against defendants Phillips, Toner, Wierzbinski, and Kelley;

5. Award plaintiff Todd Hansen $50,000 in compensatory damages against defendants Toner, Wierzbinski, and Kelley;

6. Award plaintiffs a reasonable attorney's fee, and costs and disbursements;

7. Enter such other and further relief as this Court deems proper.

Respectfully submitted,

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